

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Joint Application by SBC Communications Inc.,
Illinois Bell Telephone Company, Indiana Bell
Telephone Company Incorporated, The Ohio Bell
Telephone Company, Wisconsin Bell, Inc., and
Southwestern Bell Communications Services, Inc.
for Provision of In-Region, InterLATA Services
in Illinois, Indiana, Ohio, and Wisconsin

WC Docket No. 03- *1607*

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Federal Communications Commission
Office of the Secretary

To: The Commission

**BRIEF IN SUPPORT OF APPLICATION BY SBC FOR
PROVISION OF IN-REGION, INTERLATA SERVICES IN
ILLINOIS, INDIANA, OHIO, AND WISCONSIN**

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EXECUTIVE SUMMARY

With this Joint Application, SBC seeks authority to provide long-distance telecommunications services to the citizens of Illinois, Indiana, Ohio, and Wisconsin. This Joint Application marks the culmination of years of collaborative work by the applicant telephone companies – Illinois Bell, Indiana Bell, Ohio Bell, and Wisconsin Bell – their respective state commissions – the Illinois Corporation Commission (“ICC”), the Indiana Utility Regulatory Commission (“IURC”), the Public Utility Commission of Ohio (“PUCO”), the Public Service Commission of Wisconsin (“PSCW”) – and many local carriers to establish the framework for local competition in Illinois, Indiana, Ohio, and Wisconsin.

On May 14, 2003, the ICC issued a 926-page order (including over 3600 paragraphs) in which it painstakingly reviewed every issue under section 271(c) and found not only that Illinois Bell has satisfied Track A and the competitive checklist but that granting section 271 relief would be consistent with the public interest.

On July 2, 2003, the IURC issued an order indicating that it was prepared to support Indiana Bell’s application, subject to the implementation of the same compliance plans that SBC has already agreed to in the other SBC Midwest states.

On June 26, 2003, the PUCO issued a 252-page order that exhaustively considered each of the requirements under Track A and the competitive checklist, concluding that the evidence demonstrates that the local telecommunications market in Ohio is irreversibly open to competition and that SBC Ohio makes its network available to competitors on a nondiscriminatory basis.

The PSCW issued two separate orders – a “Phase I” order on July 1, 2003, in which it concluded that SBC Wisconsin had satisfied Track A and each of the fourteen checklist items,

and a “Phase II” order on July 7, 2003, in which it concluded that SBC Wisconsin had satisfied the checklist with respect to its operation support systems, the pricing of unbundled network elements, and the performance remedy plan.

These conclusions by the Illinois, Indiana, Ohio, and Wisconsin commissions reflect several undeniable developments:

- Illinois Bell, Indiana Bell, Ohio Bell, and Wisconsin Bell have each satisfied the 14 statutory checklist requirements for opening their local market to competition, thereby ensuring that competitive local exchange carriers (“CLECs”) have access to all the facilities and services they need to compete in their regions.
- SBC has put in place state-of-the-art, independently tested operations support systems (“OSS”) pursuant to which the SBC Midwest operating companies successfully process, on a monthly basis, hundreds of thousands of CLEC orders.
- The applicant telephone companies’ performance met or surpassed the relevant standards for 90 percent of all performance measurements in at least two of the last three months for which data are available (March – May 2003).

As a direct result of these efforts, the level of CLEC entry in the applicant states is remarkable. According to the most conservative estimates, CLECs are serving at least 29 percent of the total access lines in Illinois Bell’s serving area (amounting to approximately 2.3 million lines). In Indiana, they are serving at least 15 percent of the total access lines in Indiana Bell’s serving area (totaling at least 393,000 lines). In Ohio, the numbers are higher, with CLECs serving at least 885,000 access lines (or at least 20 percent of the total). In Wisconsin, the total number is 633,000 access lines served by CLECs, representing approximately 25 percent of the total.

Throughout SBC’s entire Midwest region, CLECs are serving the bulk of these lines over their own facilities, either exclusively or in combination with thousands of unbundled loops they have leased from the BOC applicants. By any measure, the level of local competition in Illinois,

Indiana, Ohio, and Wisconsin is substantial and certainly sufficient for demonstrating compliance with Track A.

This vibrant competition provides the lens through which the Commission should view the issues raised by this Joint Application. CLECs can and do compete effectively in the applicant states, and they are proving it every day. In previous applications, the Department of Justice has stressed that actual, broad-based entry in a state through each of the entry paths contemplated by Congress will provide invaluable evidence supporting a strong presumption that the BOC's markets have been opened. That invaluable evidence is abundant in this case, and Illinois Bell, Indiana Bell, Ohio Bell, and Wisconsin Bell have earned the strong presumption that the Department of Justice has properly identified.

To order the facilities and services that the BOC applicants make available under the 1996 Act, CLECs in all four states can choose from a wide selection of electronic (and manual) operations support systems. These include both industry-standard systems and customized systems that have been developed by SBC and offered to fit CLECs' business plans. CLECs have used these systems to order services and facilities identified in the competitive checklist – in many cases, hundreds of thousands of times.

The applicant telephone companies' outstanding performance in fulfilling these orders is verifiable, on an ongoing basis, through the performance-monitoring programs established in each state. Under those programs, the BOC applicants provide CLECs and state and federal regulators monthly reports that cover all aspects of the service they provide their CLEC customers. The accuracy of the performance measurements has been verified by the independent auditing firm Ernst & Young. In addition, BearingPoint is continuing its testing of the accuracy and reliability of the same performance measurements already verified by Ernst & Young, and

the BOC applicants have committed to working with BearingPoint as long as their state commissions believe it to be necessary.

In addition to the applicant telephone companies' outstanding commercial performance, this Commission can rely on separate, comprehensive, independent third-party OSS tests in each state and overseen by each state commission and conducted by BearingPoint modeled after the tests conducted in New York and Florida. To make the test as realistic as possible, the applicant telephone companies received "blind" service requests from a "pseudo-CLEC," which the companies provisioned in the "real world." After nearly a year and a half of cooperative planning and testing, with the participation of AT&T, WorldCom, and other CLECs at every stage, the separate, third-party tests of essentially the same systems confirmed that the applicant telephone companies' OSS provide CLECs nondiscriminatory access and can handle foreseeable CLEC demand.

The access that the BOC applicants provide CLECs to advanced services in their states is not only proven by commercial volumes and the OSS tests, but is also ensured by the existence of the structurally separate advanced services affiliate. As the Commission envisioned, because the operating companies' advanced services are provided exclusively through that structurally separate affiliate, CLECs and regulators know – even apart from the performance data demonstrating the fact – that CLECs receive nondiscriminatory access to the facilities and services they need to provide advanced services.

The applicant telephone companies have devoted enormous resources to establish a wholesale infrastructure in their states for providing excellent service to its CLEC customers, and they are committed to continuing to provide such service. In addition, they have implemented state commission approved performance remedy plans equivalent to those endorsed in prior

Commission decisions. Under this plan, the potential liability for each BOC is calculated as 36 percent of annual net return. Even if the BOC applicants were inclined to “backslide” (and they are not), such enormous liability, together with the Commissions’ powers to rescind or limit interLATA authority and to impose other penalties for violations of legal duties, provides more than ample protection to CLECs.

In every other state where section 271 relief has been granted, SBC’s long-distance entry has stimulated both long-distance and local competition. Consumers in the applicant states will likely save hundreds of millions of dollars if this Joint Application is granted. Indeed, the average consumer in states where section 271 relief has been granted has received a savings of 8 to 11 percent on the monthly interLATA bill as compared to those states where BOC entry had not yet occurred. In addition, CLECs have a substantially higher cumulative share of the local exchange market in states where BOCs have entered the long-distance market.

As Chairman Powell has noted, “[w]e see a correlation between the process for approving applications and growing robustness in the markets.” This Joint Application demonstrates in detail the steps that Illinois Bell, Indiana Bell, Ohio Bell, and Wisconsin Bell, their respective state commission and CLECs have taken to create open local markets. This Commission should approve this Joint Application and extend the benefits that section 271 can bring to the consumers of Illinois, Indiana, Ohio, and Wisconsin.

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GLOSSARY OF 271 ORDERS

<u>Arkansas/Missouri Order</u>	<u>Joint Application by SBC Communications Inc., et al. Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Arkansas and Missouri, Memorandum Opinion and Order, 16 FCC Rcd 20719 (2001), <i>aff'd</i>, AT&T Corp. v. FCC, No. 01-1511, 2002 WL 31558095 (D.C. Cir. Nov. 18, 2002) (<i>per curiam</i>)</u>
<u>BellSouth Five-State Order</u>	<u>Joint Application by BellSouth Corporation, et al., for Provision of In-Region, InterLATA Services in Alabama, Kentucky, Mississippi, North Carolina, and South Carolina, Memorandum Opinion and Order, 17 FCC Rcd 17595 (2002)</u>
<u>California Order</u>	<u>Application by SBC Communications Inc., et al. for Authorization to Provide In-Region, InterLATA Services in California, Memorandum Opinion and Order, 17 FCC Rcd 29650 (2002)</u>
<u>Georgia/Louisiana Order</u>	<u>Joint Application by BellSouth Corp., et al., for Provision of In-Region, InterLATA Services In Georgia and Louisiana, Memorandum Opinion and Order, 17 FCC Rcd 9018 (2002)</u>
<u>Kansas/Oklahoma Order</u>	<u>Joint Application by SBC Communications Inc., et al., for Provision of In-Region, InterLATA Services in Kansas and Oklahoma, Memorandum Opinion and Order, 16 FCC Rcd 6237 (2001), <i>aff'd in part and remanded</i>, Sprint Communications Co. v. FCC, 274 F.3d 549 (D.C. Cir. 2001)</u>
<u>Second Louisiana Order</u>	<u>Application of BellSouth Corp., et al., for Provision of In-Region, InterLATA Services in Louisiana, Memorandum Opinion and Order, 13 FCC Rcd 20599 (1998)</u>

<u>Massachusetts Order</u>	<u>Application of Verizon New England Inc., et al., For Authorization to Provide In-Region, InterLATA Services in Massachusetts</u> , Memorandum Opinion and Order, 16 FCC Rcd 8988 (2001), <u>aff'd in part, dismissed in part, remanded in part, WorldCom, Inc. v. FCC</u> , 308 F.3d 1 (D.C. Cir. 2002)
<u>Michigan Order</u>	<u>Application of Michigan Bell Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan</u> , Memorandum Opinion and Order, 12 FCC Rcd 20543 (1997)
<u>New Jersey Order</u>	<u>Application by Verizon New Jersey Inc., et al., for Authorization To Provide In-Region, InterLATA Services in New Jersey</u> , Memorandum Opinion and Order, 17 FCC Rcd 12275 (2002)
<u>New York Order</u>	<u>Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York</u> , Memorandum Opinion and Order, 15 FCC Rcd 3953 (1999), <u>aff'd, AT&T Corp. v. FCC</u> , 220 F.3d 607 (D.C. Cir. 2000)
<u>Pennsylvania Order</u>	<u>Application of Verizon Pennsylvania Inc., et al. for Authorization To Provide In-Region, InterLATA Services in Pennsylvania</u> , Memorandum Opinion and Order, 16 FCC Rcd 17419 (2001), <u>aff'd, Z-Tel Communications, Inc. v. FCC</u> , No. 01-1461, 2003 WL 21495165 (D.C. Cir. July 1, 2003)
<u>South Carolina Order</u>	<u>Application of BellSouth Corp., et al. Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In South Carolina</u> , Memorandum Opinion and Order, 13 FCC Rcd 539 (1997), <u>aff'd, BellSouth Corp. v. FCC</u> , 162 F.3d 678 (D.C. Cir. 1998)
<u>Texas Order</u>	<u>Application by SBC Communications Inc., et al., Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas</u> , Memorandum Opinion and Order, 15 FCC Rcd 18354 (2000), <u>appeal dismissed, AT&T Corp. v. FCC</u> , No. 00-1295 (D.C. Cir. Mar. 1, 2001)

Vermont Order

Application by Verizon New England Inc., et al., for
Authorization To Provide In-Region, InterLATA
Services in Vermont, Memorandum Opinion and
Order, 17 FCC Rcd 7625 (2002), appeal dismissed,
AT&T Corp. v. FCC, No. 02-1152, 2002 WL
31619058 (D.C. Cir. Nov. 19, 2002)

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for Provision of In-Region, InterLATA Services
in Illinois, Indiana, Ohio, and Wisconsin

WC Docket No. 03-_____

To: The Commission

**BRIEF IN SUPPORT OF APPLICATION BY SBC FOR
PROVISION OF IN-REGION, INTERLATA SERVICES IN
ILLINOIS, INDIANA, OHIO, AND WISCONSIN**

INTRODUCTION

Pursuant to section 271(d)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("1996 Act" or "Act"), Pub. L. No. 104-104, § 151(a), 110 Stat. 56, 89, SBC Communications Inc. and its subsidiaries Illinois Bell Telephone Company ("Illinois Bell"), Indiana Bell Telephone Company Incorporated ("Indiana Bell"), The Ohio Bell Telephone Company ("Ohio Bell"), Wisconsin Bell, Inc. ("Wisconsin Bell"), and Southwestern Bell Communications Services, Inc. ("SBCS") – collectively "SBC" – seek authority to provide in-region, interLATA services (including services treated as such under 47 U.S.C. § 271(j)) in the states of Illinois, Indiana, Ohio, and Wisconsin.¹

¹ This Brief refers to Illinois Bell, Indiana Bell, Ohio Bell, and Wisconsin Bell as both "the BOC applicants" and "the applicant telephone companies." This filing is, in fact, four

This Joint Application reflects years of work by Illinois Bell, Indiana Bell, Ohio Bell, Wisconsin Bell, the state commissions, and the CLEC community to follow the roadmap to competition that this Commission established in prior section 271 orders. They have worked together to ensure the development of effective local competition, to address the concerns identified in the various state proceedings, and to keep pace with continued evolution in technology and legal requirements. This Joint Application represents the culmination of those efforts.

The ICC, the IURC, the PUCO, and the PSCW took advantage of parallel collaborative proceedings in other states throughout the SBC and Midwest regions, and of the proceedings and conditions that led to approval of the SBC/Ameritech merger by the Commission and by other state commissions in the SBC Midwest region. Where collaborative sessions were held in one state in SBC's Midwest region, their results were imported into the others. For example, many operations support systems ("OSS") enhancements and operational process improvements were addressed in Wisconsin collaboratives (which included open participation by many of the same CLEC parties) and then applied in Illinois, Indiana, and Ohio. See VanderSanden Aff. ¶¶ 27-32 (App. A, Tab 40). Throughout this process, the state commissions compiled an exhaustive record of comments, pleadings, briefs, transcripts, and related materials.

separate applications for section 271 relief. The statute contemplates the possibility of a single application for more than one state, see 47 U.S.C. § 271(d)(1), and SBC's purpose in filing this "Joint Application" is to simplify the presentation of common issues and to permit both this Commission and interested parties to reduce unnecessary duplication of effort. The applications for section 271 relief in Illinois, Indiana, Ohio, and Wisconsin are independent of one another, and each should be reviewed separately and on its own terms. SBC will soon file with the FCC an application for authorization under 47 U.S.C. § 214 to provide international services originating in Illinois, Indiana, Ohio, and Wisconsin.

All four state commissions independently considered these section 271 applications through administrative processes that meet all four criteria for authoritativeness identified in prior Commission orders. See, e.g., New York Order ¶ 20; Texas Order ¶ 11. As described throughout this Joint Application, each state commission has assembled a record including:

- participation by all interested parties in years of proceedings relating to section 271;
- reliance on extensive third-party testing of SBC Midwest's systems, processes, and procedures, carried out under the auspices of their respective state commissions;
- the results of technical conferences, hearings, and workshops before the state commissions in which SBC, as well as the CLECs, worked through implementation issues; and
- comprehensive performance monitoring mechanisms, pursuant to which CLECs and state and federal regulators can obtain a clear picture of the quality of service that SBC is providing to its CLEC customers in each of the applicant states.

A. Illinois

On October 24, 2001, the ICC issued an order initiating a proceeding to investigate the status of Illinois Bell's compliance with section 271 of the Act, to hold hearings, and to develop a comprehensive factual record for purposes of its anticipated consultation with this Commission.² The ICC established two phases for the proceeding: Phase I would cover as much of the competitive checklist as possible with the results of the BearingPoint OSS test; and Phase II would cover all remaining OSS issues and other issues not addressed in Phase I.³

² See Order Initiating Investigation, Investigation Concerning Illinois Bell Telephone Company's Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. 01-0662 (ICC Oct. 24, 2001) (App. C-IL, Tab 1).

³ Id. at 3.

With respect to Phase I, Illinois Bell submitted its “Checklist Informational Filing” on November 20, 2001, providing drafts of the affidavits and brief for its section 271 filing.⁴ The ICC extended intervenor status to 24 different CLECs and trade associations, and many of them participated actively throughout the proceedings. The ICC oversaw industry workshops in January 2002 to permit the parties to refine the issues to be addressed. The parties submitted pre-filed testimony addressing the issues identified in the workshops as well as other issues relating to Track A, the competitive checklist, and the public interest. An evidentiary hearing was held in June 2002 and early July, and the parties filed post-hearing briefs and reply briefs. The Administrative Law Judge (“ALJ”) issued a Proposed Interim Order for Phase IA⁵ on December 6, 2002. After further briefing, the ALJ issued the Phase I Interim Order on Investigation on February 6, 2003.⁶

With respect to the Phase II proceedings, BearingPoint submitted its interim report regarding its review of SBC Illinois’s performance measurements on December 20, 2002.⁷ On

⁴ Phase I Checklist Filing of Ameritech Illinois, Investigation Concerning Illinois Bell Telephone Company’s Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. 01-0662 (ICC filed Nov. 20, 2001) (App. C-IL, Tab 3).

⁵ Phase I was subsequently divided into Phase IA, which dealt with the checklist and Track A, and Phase IB, which addressed performance and remedy-plan issues. On January 16, 2003, the ALJ merged the Phase IB issues into the pending Phase II proceeding. See Administrative Law Judge’s Ruling, Investigation Concerning Illinois Bell Telephone Company’s Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. 01-0662, at 4 (ICC Jan. 16, 2003) (App. C-IL, Tab 68).

⁶ Phase I Interim Order on Investigation, Investigation Concerning Illinois Bell Telephone Company’s Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. 01-0662 (ICC Feb. 6, 2003) (App. C-IL, Tab 85).

⁷ BearingPoint Illinois OSS Evaluation Project Report (Dec. 20, 2002) (App. M, Tab 111).

January 17, 2003, SBC Illinois submitted the results of the review carried out by Ernst & Young, LLP (“E&Y”).⁸ Following the issuance of a procedural schedule, the ALJ presided over a series of workshops in February 2003, and the parties had the opportunity to question witnesses from BearingPoint and E&Y. The parties subsequently submitted affidavits, rebuttal affidavits, comments, reply comments, and briefs.

The ALJ issued a Proposed Final Order on April 8, 2003, incorporating both the Phase I and Phase II proceedings.⁹ The parties then filed exceptions to which others subsequently replied. On May 13, 2003, the ICC issued a 926-page Final Order on Investigation, covering all of the areas addressed in the Interim Order, as well as the Phase II issues addressing the adequacy of SBC Illinois’s OSS, an evaluation of SBC Illinois’s actual performance, and a consideration of the compromise remedy plan.¹⁰ After reviewing the massive record compiled in both Phases of its proceeding, the ICC concluded that “SBC Illinois satisfies Section 271(c)(1)(A) of the Telecommunications Act of 1996”; that SBC Illinois is in “sufficient and substantial compliance with checklist items (i) through (xiv)”; and that its “review of the public interest in all relevant particulars demonstrates that SBC Illinois’ requested authorization to

⁸ Ernst & Young, Report of Independent Accountants (Jan. 17, 2003), Attachment O to Affidavit of James D. Ehr, Investigation Concerning Illinois Bell Telephone Company’s Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. 01-0662 (ICC filed Jan. 17, 2003) (App. C-IN, Tab 69).

⁹ Administrative Law Judge’s Proposed Final Order on Investigation, Investigation Concerning Illinois Bell Telephone Company’s Compliance with Section 271 of the Telecommunications Act of 1996, Docket No. 01-0662 (ICC Apr. 8, 2003) (App. C-IL, Tab 112).

¹⁰ Order on Investigation, Investigation Concerning Illinois Bell Telephone Company’s Compliance with Section 271 of the Telecommunications Act of 1996, No. 01-0662 (ICC May 13, 2003) (“ICC Final Order”) (App. C-IL, Tab 135).

provide in-region, interLATA services in Illinois is consistent with the public interest, convenience and necessity.” ICC Final Order ¶ 3612.

B. Indiana

On February 2, 2000, Indiana Bell formally requested that the IURC commence a process to review its application to provide long-distance services in Indiana.¹¹ Indiana Bell requested that the IURC review checklist compliance and the performance assurance plan separate from overseeing (and, ultimately, reviewing) the testing of the OSS and performance measures. On March 19, 2001, the IURC issued an order authorizing the OSS test.¹² On September 26, 2002, Indiana Bell made its checklist informational filing. See Butler Aff. ¶ 45 (App. A, Tab 8). On December 11, 2002, parties filed comments and affidavits on Indiana Bell’s September 26, 2002 Checklist Informational Filing. Reply comments and affidavits were filed on January 8, 2003. The IURC gave the parties an opportunity to discuss the checklist filings during workshops held April 2 and 3, 2003. Id. ¶ 46.

Meanwhile, with respect to the Phase II proceeding, Indiana Bell filed a Request that the IURC direct BearingPoint to issue a test report reflecting the status of the OSS test by February 28, 2003. Id. ¶ 47. Indiana Bell also filed a notice that it would supplement the record with the E&Y audit. On February 7, 2003, the IURC issued an Entry directing BearingPoint to issue its

¹¹ Petition of Ameritech Indiana, Petition of Indiana Bell Telephone Company, Incorporated d/b/a SBC Indiana Pursuant to I.C. 8-1-2-61 for a Three Phase Process for Commission Review of Various Submissions of Ameritech Indiana To Show Compliance with Section 271(c) of the Telecommunications Act of 1996, Cause No. 41657 (IURC Feb. 2, 2000) (App. C-IN, Tab 1).

¹² Order, Petition of Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to I.C. 8-1-2-61 for a Three Phase Process for Commission Review of Various Submissions of Ameritech Indiana To Show Compliance with Section 271(c) of The Telecommunications Act of 1996, Cause No. 41657 (IURC Mar. 19, 2001) (App. C-IN, Tab 19).

report by February 28, 2003. Interested parties filed comments on BearingPoint's interim report on April 17, 2003, and Indiana Bell responded on May 1, 2003. Id. ¶ 48. On May 12, 2003, BearingPoint submitted an updated version of the February 28 report. Id. ¶ 50.

On July 2, 2003, the IURC issued a preliminary order in which it identified the need to file the "Compliance Plans" that had been originally developed in Michigan and subsequently filed in Illinois.¹³ Subject to the filing of these final versions of the Compliance Plans, the IURC indicated that it was "prepared to support SBC Indiana's application to the FCC."¹⁴

C. Ohio

Even before the Telecommunications Act was passed in 1996, the PUCO has been actively developing policies promoting local competition. See McKenzie Aff. ¶ 6 (App. A, Tab 32). The PUCO began working on section 271 when it opened a docket in July 1996 to examine Ohio Bell's compliance with the competitive checklist. Id. ¶ 9. In this initial proceeding, interested parties filed a significant number of motions and briefs and participated in direct and cross-examination of witnesses. Moreover, the PUCO established in 1999, pursuant to the SBC-Ameritech merger agreement, an Ohio-specific industry collaborative to investigate the implementation of the Texas OSS and facilities performance measures, as well as the associated standards, benchmarks, and remedies. See McKenzie Aff. ¶ 9.

¹³ Compliance Order, Petition of Indiana Bell Telephone Company, Incorporated d/b/a Ameritech Indiana Pursuant to I.C. 8-1-2-61 for a Three Phase Process for Commission Review of Various Submissions of Ameritech Indiana To Show Compliance with Section 271(c) of the Telecommunications Act of 1996, Cause No. 41657, Attach. 1 (IURC July 2, 2003) ("IURC Compliance Order") (App. C-IN, Tab 71).

¹⁴ Id. at 12.

On June 1, 2000, the PUCO established a phased approach to reviewing Ohio Bell's section 271 application.¹⁵ This included: (1) a regional third-party test of Ohio Bell's OSS and performance measurements; (2) a review of Ohio Bell's compliance with the competitive checklist and of its performance remedy plan; and (3) a review of the final OSS test report and performance results. See McKenzie Aff. ¶ 11.

The PUCO established two additional collaboratives. One was dedicated to developing a master test plan for purposes of governing BearingPoint's third-party test of Ohio Bell's OSS.¹⁶ The second collaborative focused on evaluating the adopted Texas performance measures and evaluating how those measures could be enhanced, modified, and deleted, or how new measures might be added to achieve a set of "best practice" rules that would satisfy Ohio's needs.¹⁷

The PUCO Staff facilitated numerous and lengthy collaborative workshops between Ohio Bell and interested CLECs throughout the section 271 process. See McKenzie Aff. ¶¶ 27-36. These collaboratives addressed such subjects as OSS enhancements, development and supervision of the OSS test (including interfaces, processes and procedures with review and validation of all test results), performance measurements and checklist items (including UNE combinations). Id.

¹⁵ Entry, Further Investigation into Ameritech Ohio's Entry into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996, Case No. 00-942-TP-COI (PUCO June 1, 2000) ("PUCO Initial Order") (App. C-OH, Tab 2).

¹⁶ Entry, Further Investigation into Ameritech Ohio's Entry into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996, Case No. 00-942-TP-COI, at 5 (PUCO Dec. 7, 2000) (App. C-OH, Tab 12).

¹⁷ PUCO Initial Order at 4.

On August 9, 2001, Ohio Bell filed a notice that it intended to seek approval under section 271.¹⁸ See McKenzie Aff. ¶ 13. Ohio Bell filed initial affidavits in support of its claim that it had complied with the competitive checklist and filed additional affidavits in May and July 2002. CLECs filed comments in response to Ohio Bell's initial filing and to the subsequent filings. On November 12, 2002, Ohio Bell filed a supplemental notice of its intent to file its section 271 application¹⁹ and a notice informing the parties that it intended to supplement the record with audit data from E&Y.²⁰ See McKenzie Aff. ¶ 13. Finally, Ohio Bell filed a letter requesting that the PUCO or its Staff direct BearingPoint to issue its test report with respect to all portions of its Ohio OSS test.²¹

On June 26, 2003, the PUCO issued a 252-page report, exhaustively considering and unequivocally endorsing Ohio Bell's showing of compliance with Track A and each of the

¹⁸ See Ameritech Ohio's Notice of Filing Information Concerning Section 271 Checklist Compliance, Further Investigation into Ameritech Ohio's Entry into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996, Case No. 00-942-TP-COI (PUCO filed Aug. 9, 2001) (App. C-OH, Tab 32).

¹⁹ See SBC Ameritech Ohio's Supplemental Notice of Intent To File an Application Pursuant to Section 271 of the Telecommunications Act of 1996, Further Investigation into SBC Ameritech Ohio's Entry into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996, Case No. 00-942-TP-COI (PUCO filed Nov. 12, 2002) (App. C-OH, Tab 95).

²⁰ See SBC Ameritech Ohio's Notice of Intent To File in Phase III Performance Measure Audit Reports, Further Investigation into SBC Ameritech Ohio's Entry into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996, Case No. 00-942-TP-COI (PUCO filed Nov. 12, 2002) (App. C-OH, Tab 96).

²¹ See Letter from Daniel R. McKenzie to Alan Schriber, Chairman, PUCO, Case No. 00-942-TP-COI (PUCO filed Nov. 12, 2002) (App. C-OH, Tab 97).

checklist requirements.²² The PUCO recognized that the evidence in this record demonstrates that “SBC Ohio has opened its local market to competitive local exchange companies (CLECs) who wish to compete in Ohio . . . by fully implementing the competitive checklist found in Section 271(c)(2)(B) with respect to its provision of access and interconnection pursuant to Section 271(c)(1)(A).”²³ The PUCO concluded that, “based on the proceeding [it] conducted, SBC Ohio’s network, for the purpose of satisfying the requirements of the 1996 Act, is open to competitors on a non-discriminatory basis.”²⁴

Although the PUCO strongly recommended approval of Ohio Bell’s application, it recognized that it would be valuable for Ohio Bell to file Ohio-specific “compliance plans” patterned after those that SBC had already filed in Michigan and Illinois.²⁵ Ohio Bell filed the plans on July 3, 2003.²⁶ They included third-party verified plans addressing Customer Service Record Accuracy, Special Services Repair Coding Accuracy and Service Order Completion Timeliness. See McKenzie Aff. ¶ 18. In addition, Ohio Bell submitted the self-reported plans

²² See Report and Evaluation, Investigation into SBC Ohio’s (formerly Ameritech Ohio) Entry into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996, Case No. 00-942-TP-COI (PUCO June 26, 2003) (“PUCO Final Report and Evaluation”) (App. C-OH, Tab 129).

²³ Letter from Alan R. Schriber, Chairman, PUCO, to the FCC Commissioners at 1 (June 26, 2003), attaching the PUCO Final Report and Evaluation.

²⁴ Id.

²⁵ See Order, Investigation into SBC Ohio’s Entry into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996, Case No. 00-942-TP-COI, at 7 (PUCO June 26, 2003) (“PUCO Final Order”) (App. C-OH, Tab 128).

²⁶ See SBC Ohio’s Compliance Plan, Investigation into SBC Ohio’s Entry into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996, Case No. 00-942-TP-COI (PUCO filed July 3, 2003) (App. C-OH, Tab 130).

addressing Billing Auditability, Change Management Communications, Line Loss Notification and Preorder Processing Timeliness. Id. Finally, as directed, Ohio Bell will report to the PUCO on the results of Michigan Bell's compliance plan implementation for directory listings and directory assistance accuracy. Id. The PUCO also ordered Ohio Bell and BearingPoint to complete the OSS test, which Ohio Bell had already committed to do. See id. ¶ 19.

D. Wisconsin

On September 14, 2001, the PSCW issued a notice opening the section 271 docket in Wisconsin.²⁷ Pursuant to this Notice, Wisconsin Bell submitted a draft application for section 271 relief, including affidavits, on March 19, 2002. See VanderSanden Aff. ¶ 14.

On May 3, 2002, the PSCW established a hearing date and filing schedule for comments and reply affidavits from interested parties.²⁸ The parties conducted a technical hearing later that month before the presiding Administrative Law Judge. The Commission revised its filing schedule for reply comments and affidavits from interested parties, see VanderSanden Aff. ¶ 41, and interested parties filed comments and affidavits on July 2, 2002.

Between July and October 2002, the parties participated in a number of collaboratives to resolve some of the outstanding issues. The PSCW solicited further comments and supporting affidavits, and materials were filed by interested parties on November 15, 2002, December 5,

²⁷ Notice of Proceeding and Investigation and Assessment of Costs, Petition of Wisconsin Bell, Inc., for a Section 271 Checklist Proceeding, Docket No. 6720-TI-170 (PSCW Sept. 14, 2001) (App. C-WI, Tab 1).

²⁸ Notice of Proceeding and Investigation and Assessment of Costs and Technical Hearing, Petition of Wisconsin Bell, Inc., for a Section 271 Checklist Proceeding, Docket No. 6720-TI-170 (PSCW May 2, 2002) (App. C-WI, Tab 6).

2002 and December 16, 2002. The PSCW requested proposed findings of fact and conclusions of law in conjunction with the December 2002 filings. Id. ¶ 42.

The parties submitted initial comments, proposed findings of fact, and conclusions of law on December 5, 2002. Reply comments were filed on December 16, 2002. Staff provided the parties with a draft proposed order addressing Phase I issues on January 15, 2003, and the parties were invited to provide comments. Id. In response to the draft proposed order, Wisconsin Bell submitted a Compliance Plan on February 7, 2003. See id. On July 1, 2003, the PSCW issued an order, concluding that Wisconsin Bell had satisfied Track A and the requirements of the competitive checklist, subject to the issues reserved for Phase II.²⁹ On July 7, 2003, the PSCW issued a separate order on Phase II, concluding that Wisconsin Bell provides nondiscriminatory access to its OSS and that it provides UNEs at TELRIC-based rates.³⁰

* * * *

This Joint Application confirms what the state commissions have all expressly found – that SBC has satisfied all prerequisites for interLATA relief. Part I of this Brief details CLECs’ provision of local services in the applicant states and explains that, as a result, the BOC applicants are entitled to a “strong presumption” that they comply with the competitive checklist. Part I also details their satisfaction of the first statutory requirement for section 271 relief under

²⁹ Determination, Petition of Wisconsin Bell, Inc., for a Section 271 Checklist Proceeding, Docket No. 6720-TI-170 (PSCW July 1, 2003) (App. C-WI, Tab 66) (“PSCW Phase I Final Order”).

³⁰ Determination, Petition of Wisconsin Bell, Inc., for a Section 271 Checklist Proceeding, Docket No. 6720-TI-170 (PSCW July 7, 2003) (App. C-WI, Tab 67) (“PSCW Phase II Final Order”).

Track A – the presence of predominantly facilities-based competitors in the local business and residential markets. See 47 U.S.C. § 271(c)(1)(A), (d)(3)(A).

After this empirical proof that local markets are open, Part II demonstrates that the measurements in place to evaluate the BOC applicants' wholesale performance are accurate and reliable. Their data have been verified by a third-party audit, and the measurements themselves were developed through open and collaborative workshops, under the supervision by the state commissions. Moreover, Part II shows that the applicant telephone companies have data controls in place, make raw performance data available to CLECs, and stand ready to engage in data reconciliation.

Part III demonstrates in detail the BOC applicants' compliance with the specific requirements of the competitive checklist, as established by the 1996 Act and amplified by this Commission's implementing decisions. Part III describes the specific terms and conditions of their tariffs and interconnection agreements, as well as technical features of their networks. It demonstrates that the applicant telephone companies' performance in serving CLECs is nondiscriminatory and easily sufficient to provide them with a meaningful opportunity to compete in the local market. This discussion and the affidavits supporting this Joint Application confirm that CLECs in Illinois, Indiana, Ohio, and Wisconsin have access to everything they reasonably might need to compete in those states.

Part IV of this Brief demonstrates that approving this Joint Application would serve the public interest, convenience, and necessity, in satisfaction of 47 U.S.C. § 271(d)(3)(C). Indeed, approval of this Joint Application is not merely consistent with the public interest; freeing SBC from statutory entry barriers is necessary to further local entry and bring consumers in the

applicant states the same benefits of both local and long-distance competition that consumers are now experiencing in other states with section 271 relief.

Part V confirms that SBC will abide by the structural and non-structural safeguards of section 272, as well as the Commission's implementing regulations, when it provides interLATA services in Illinois, Indiana, Ohio, and Wisconsin. See 47 U.S.C. § 271(d)(3)(B).³¹

DISCUSSION

I. SBC HAS SATISFIED THE REQUIREMENTS OF TRACK A IN EACH OF THE FOUR APPLICANT STATES

There can be no serious dispute that the BOC applicants satisfy Track A of the 1996 Act, 47 U.S.C. § 271(c)(1)(A). See Heritage Affs. ¶¶ 4-5 (App. A, Tabs 24-27); see also id., Attach. E.³² The ICC concluded that there are least 12 CLECs that "provide services to residential and business subscribers in the State of Illinois, either exclusively or predominantly over their own facilities." ICC Final Order ¶ 129. The PUCO concluded that Track A had been satisfied, based on evidence that Ohio Bell "had entered into 130 wireline interconnection and resale agreements that were filed and approved by the PUCO" and on the fact that six CLECs "were specifically

³¹ The Anti-Drug Abuse Act certifications required under 47 C.F.R. § 1.2002 are provided in Attachment 2 to this Brief. SBC has, in addition, complied with the FCC's pre-filing consultation requirements through the state commissions' pre-filing proceedings, as described above. SBC has consistently attempted in those proceedings, in its interconnection negotiations and elsewhere, to resolve disputed issues pertaining to the competitive checklist and other relevant matters. This Brief and its supporting affidavits are available in electronic form at http://www.sbc.com/public_affairs/competition_and_long_distance/long_distance_by_state/0,,55,00.html.

³² A list of state commission-approved interconnection agreements is provided as an attachment to the Affidavits of Rhonda J. Johnson for Illinois, Jolynn B. Butler for Indiana, Daniel R. McKenzie for Ohio, and Scott T. VanderSanden for Wisconsin. The status of federal court challenges to these agreements in Illinois, Indiana, Ohio, and Wisconsin is provided in Attachment 3 to this Brief.